

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2001-531

August 13, 2002

BRADFORD SNOW, ET AL
Request for Commission Investigation
Into Central Maine Power Company's
Abandonment of Demand-Side Energy
Management ("DSM") Agreements with
Cogenex Corporation

ORDER APPROVING
STIPULATION

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

Through this Order, we approve a Stipulation that resolves all issues in this proceeding.

II. BACKGROUND

On August 1, 2001, ten persons filed a complaint against Central Maine Power Company (CMP), pursuant to 35-A M.R.S.A. § 1302, alleging long-standing unreasonable acts and practices with respect to the administration of DSM agreements. The complaint included allegations that CMP acted unreasonably in discontinuing payments to various DSM providers as a result of its view that contract violations had occurred. The complaint sought, among other things, an order directing CMP to make retroactive and continuing payments under the DSM agreements.

On August 13, 2001, CMP filed an answer and motion to dismiss, denying the substance of the complaint and arguing that the Commission lacked jurisdiction to resolve the complaint. Pursuant to Commission order, the complainants filed an offer of proof and CMP submitted a response regarding the historic administration of DSM agreements.

During the pendency of this proceeding, the Legislature enacted "An Act to Strengthen Energy Conservation," P.L. 2002, ch. 624 (Conservation Act). Among other things, the Conservation Act conferred jurisdiction on the Commission to resolve disputes arising under DSM agreements and amended legislative standards applied in administering and interpreting DSM agreements impacted by the restructuring of Maine's electric industry.

On June 21, 2002, a Stipulation was filed that is intended as a comprehensive resolution to all issues in this proceeding. The complainants, CMP, and the Public Advocate have executed the Stipulation. The stipulating parties agree that the

Commission has jurisdiction over the complaint and that the complaint alleging misconduct by CMP with respect to the administration of DSM contract should be withdrawn with prejudice.¹

Through the Stipulation, the parties ask the Commission to find that two Settlement Agreements with DSM providers represent reasonable resolutions of the issues underlying the complaint. The first Agreement is with Cogenex Corporation and calls for payments retroactive to the date that CMP discontinued payments and resumption of payments for energy savings. The parties, except for CMP, agree that interest on the retroactive payments at the rate of five percent per annum should be paid to Cogenex; CMP takes no position on the issue. The second Agreement is with IES Kilowatt Savings, Inc. and provides for the termination of the IES DSM agreements in return for a lump sum payment by CMP.

III. DISCUSSION

In reviewing stipulations, the Commission considers whether: the stipulating parties represent a broad spectrum of interests so that there is no appearance or reality of disenfranchisement; the process that led to the stipulation was fair to all parties; and the stipulated result is reasonable, in the public interest and not contrary to legislative mandates. *Central Maine Power Company, Proposed Increase in Rates*, Docket No. 92-345(II) (Jan. 10, 1995). We find that the Stipulation filed in this proceeding meets these criteria.

The Stipulation was entered into by both the complainants and respondent (CMP) in this proceeding. Additionally, the Public Advocate, who represents the general body of ratepayers, has joined the Stipulation. We are thus satisfied that a broad spectrum of interests support the Stipulation. We also conclude that the process was fair to all parties. Finally, as discussed below, we conclude that the Stipulation is reasonable, in the public interest and consistent with legislative mandates.

Through the Conservation Act, the Legislature amended the standards governing the administration and interpretation of DSM agreements that pre-date industry restructuring. The amended language expresses a legislative intent that DSM agreements, such as those at issue in this proceeding, should be maintained if the energy savings contemplated in the agreements continue to exist. The DSM measures involved in the disputed agreements continue to produce the contemplated energy savings. We, thus, conclude that the stipulated agreement for CMP to resume its payment obligations under the DSM agreements is consistent with legislative intent. In addition, we have reviewed CMP's analysis of the economics of its buyout of the IES agreements and find that the buyout is reasonably likely to produce ratepayer savings. We conclude that CMP has acted reasonably in buying out the IES agreement.

¹ The Stipulation also states that the Public Advocate should be granted intervenor status in this proceeding. We hereby grant the Public Advocate's petition to intervene.

The Cogenex Settlement Agreement provides that the retroactive payments include five percent interest if approved by the Commission. The complainants and the Public Advocate support the payment of interest and CMP takes no position on the issue. Under the circumstances of this case, we find the inclusion of five percent interest on the retroactive payments to be a reasonable accommodation and we therefore approve it.

For the foregoing reasons, we conclude that the Settlement Agreement represents a reasonable resolution of issues arising from the complaint and that the payments CMP makes under the Settlement Agreements are prudently incurred. We also adopt the stipulated ratemaking provisions in which the CMP payments will be reconciled in the same manner as other payments pursuant to the Power Partners Program.

Accordingly, we

ORDER

That the Stipulation filed on June 21, 2002, is hereby approved and incorporated into this Order.

Dated at Augusta, Maine, this 13th day of August, 2002.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.